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No. 83-1310

In The
Supreme Court of the United States
October Term 1983

EDWARD T. YOUNG, JR., WILLOW WATER DISTRICT, SOUTH CHERRY CREEK LAND COMPANY, SMOKEY HILLS LAND COMPANY, EAST CHERRY VALLEY WATER AND SANITATION DISTRICT, ADOLPH COORS COMPANY,

Petitioners,

vs.

SOUTHWESTERN COLORADO WATER CONSERVATION DISTRICT, ET AL.,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF COLORADO

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February 24, 1984

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This Brief is submitted in support of the petition herein by the Town of Castle Rock, (herein "Castle Rock") and F.B. Rooke & Sons, (herein "Rooke"), Respondents here, and Appellees below.

Castle Rock is a Colorado municipality about 20 miles south of Denver, which relies upon "nontributary ground water", outside a "designated ground water basin" for a significant amount of its municipal water supply.

F.B. Rooke & Sons is a landowner of ranching properties in Pueblo and Huerfano Counties, Colorado. These Respondents are in the same position as many other par-

ties to this proceeding, and do not have economic incentives, by themselves, to come before the Supreme Court on this issue but who can afford to, and hereby do, support those who have done so.

Castle Rock and Rooke fully support and adopt as their own, the Statement of Questions Presented and Reasons for Granting the Writ set out in the Petition herein, and support the Petition herein filed on February 6, 1984.

Castle Rock and Rooke wish to emphasize the magnitude of inequity if the decision below is not considered by the Supreme Court. Between them they own, or include within their respective boundaries, in a semi-arid environment, over 5,000 and 10,000 acres of land, respectively, which may overlie (estimated) at least 3,000 to 6,000 acre-feet per year of production, respectively. The legal right to a reliable source of supply of water in Colorado is worth between $2,000 and $6,000 per acre-foot in the fast-growing area of Castle Rock, and between $1,000 and $3,000 per acre-foot in the area of Rooke's property. The monetary impact of the decision below therefore may be (at least) Six Million Dollars to Castle Rock and to Rooke, each.

As can be observed from the Opinion (*State of Colorado v. Southwestern Colorado Water Conservation District*, 671 P.2d 1294, Colo. Supreme Court, 1983), the trial judge did not disturb the prior general understanding of landowners and appropriators. *But* the Colorado Supreme Court *did*. (See for example the discussion at headnote 5, 671 P.2d pages 1316 through 1319). To say that this ruling came as a surprise to people who thought

they had property rights is an extreme understatement and a distortion of the prior reasonable interpretation of *all* the prior Colorado cases cited and quoted in the Opinion and the footnotes. It truly "upset the apple cart". Where may a person turn when his rights, which he reasonably believed to be *property,* are wiped out? Only to a higher authority.

The opinion sought to be reviewed says, at 671 P.2d 1316, that:

> Second, and more importantly, we believe that, given the state's plenary control over development of water law, the traditional property concept of fee ownership is of limited usefulness as applied to nontributary ground water and serves to mislead rather than to advance understanding in considering public and private rights to utilization of this unique resource.

If that reasoning is extended to all "traditional property concepts", what is left? *Nothing.* There is not *one* "traditional property concept" which could not be banished by a legitimate judicial finding that it is of "limited usefulness" in considering "public and private rights" to utilization of the property (always a "unique resource").

Please review what has happened to Colorado property (water) law.

Castle Rock and Rooke join in the Petition for Certiorari and all supporting documents, and data, and in other support therefor.

Castle Rock and Rooke were represented below by counsel who has drafted this Brief, but who is not a member of the bar of the Supreme Court of the United States,

and who has asked the undersigned member of said bar to sign as "Counsel of Record" for that reason.

Respectfully submitted,

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